

Chapter 7**Miscellaneous Petitions****RULE 607.01 PETITIONS FOR FAMILY ALLOWANCE**

A petition for family allowance for the surviving spouse, minor children of the decedent, or physically or mentally incapacitated adult children of the decedent who were dependent on the decedent for support, if made before the filing of the inventory and within six months from the qualification of the personal representative, may be presented ex parte. Ordinarily, the ex parte order for family allowance will be made for a period commencing with the date of death and continuing until the inventory is filed, but not to exceed six months. When the petitioner is not the personal representative, consent to the allowance or a waiver of notice by the representative must accompany the petition.

In all other cases the petition for family allowance should be noticed and set for hearing on the calendar. Known creditors should be given notice and a copy of the petition. The order will be limited to a definite period, usually not to exceed 12 months. The court will not make an order for family allowance for an unlimited period.

A petition seeking in excess of one thousand dollars (\$1,000.00) per month must contain an itemized estimate of all anticipated monthly expenses, an estimate of the gross and net estate and an estimate of the dollar amount of unpaid claims. Such itemization is preferred in all cases, and may be required with respect to petitions seeking lesser amounts. A petition containing an itemized expenditure for real or personal property must include a statement explaining how title to the property is vested.

In addition, a petition which requests an allowance for a spouse, parent, or adult child who is not incapacitated must contain statements setting forth all income from sources outside the estate, and an itemized description of such person's property.

If the estate is being administered under the Independent Administration of Estates Act, the personal representative may pay a reasonable family allowance in accordance with Probate Code Section 10535.

RULE 607.02 PETITIONS FOR AUTHORITY TO BORROW MONEY - BONDS

A petition for authority to borrow money should state, in addition to the matters set forth in Probate Code Section 9802(b), the identity of the lender, the net amount the estate expects to receive, the amount of bond in force, and if bond is required, the amount by which the bond should be increased. If no additional bond is required, or if bond is waived, that fact should be alleged.

RULE 607.03 PETITIONS TO DETERMINE TITLE TO REAL OR PERSONAL PROPERTY PURSUANT TO PROBATE CODE SECTIONS 9860 AND 2520

A petition pursuant to Probate Code Sections 9860 or 2520 should be so captioned to alert the Clerk to set the petition for hearing at least 40 days from the date of filing. If difficulties in service of required notices of hearing are anticipated, attorneys are asked to request a later hearing date so as to avoid continuance of the hearing date.

The description of the property in the petition must be sufficient to give adequate notice to any interested party. The description of any real property shall include the street address or, if none, an indication of the location of the property. A copy of the petition must be served with the notice of hearing.

RULE 607.04 PETITIONS FOR PERMISSION TO CONTINUE OPERATION OF A DECEDENT'S BUSINESS

In addition to the notice prescribed by Probate Code Section 9760 for petitions for permission to continue the operation of a decedent's business, notice of the time and place of the hearing shall be mailed to all heirs or devisees at least 15 days prior to the time set for the hearing.

RULE 607.05 PETITIONS FOR DETERMINATION OF ENTITLEMENT TO ESTATE DISTRIBUTION

A petition under Probate Code Sections 11700 et seq. may include a request for an interpretation of the will. The order determining entitlement to estate distribution should provide for complete resolution of the issues raised by the pleadings. Counsel should review the following two cases for guidance in this regard: Bodine v. Superior Court (1962) 209 Cal.App.2d 354 [26 Cal.Rptr. 260]; and Estate of Brissell (1963) 218 Cal.App.2d 841 [32 Cal.Rptr. 458]. When a determination of distribution is requested in a petition for distribution, notice must be given in the same manner as is required when a separate petition under Section 11700 is filed.

RULE 607.06 PETITIONS TO VACATE ORDER FIXING INHERITANCE TAX

In the case of decedents who died prior to the effective date of repeal of the California Inheritance Tax, June 8, 1982, an order confirming report of Inheritance Tax Referee and fixing the inheritance tax may be vacated ex parte within six months of the date of the order either on stipulation of the attorney for the estate and the State Controller or on motion under Section 473 of the Code of Civil Procedure.

RULE 607.07 PETITIONS TO COMPROMISE WRONGFUL DEATH CLAIMS

Recovery of damages for wrongful death, as distinguished from physical injury and property damage, are held by the fiduciary as a representative of the statutory beneficiaries and are not part of the decedent's estate. The disposition of such damages for wrongful death, and the amount of attorneys' fees and costs, may be determined by the court on a petition for authority to compromise pursuant to Section 9835 of the Probate Code. The Clerk sets the petition for hearing, and the personal representative gives notice in the manner specified in Probate Code Section 1220.

This procedure is applicable to any action by the personal representative under federal law, as well as state law.

If a personal representative collects damages and costs arising out of the physical injury of decedent, or property damage as distinguished from wrongful death, the representative shall hold such money in his or her representative capacity as property of the estate. Therefore, it (or the claim giving rise to it) must be inventoried.

RULE 607.08 PETITIONS FILED UNDER THE UNIFORM TRANSFERS TO MINORS ACT (UTMA)

Petitions filed under the Uniform Transfers to Minors Act (Probate Code Sections 3900 et seq.) to transfer title to a minor's funds to a custodian on behalf of the minor under Probate Code Section 3906(c)(3) must set forth jurisdictional facts (see Probate Code Section 3921), state the amount to be paid, state by whom the amount is to be paid, state what reimbursement for costs and/or fees is requested, and request the transfer of the balance of the funds to another adult or trust company as custodian as provided in Probate Code Section 3909.

If distribution is to be made from a probate estate to a custodian for a minor, the requirements of Rule 608.21 must also be met in the probate proceeding.

If the petition merely seeks the transfer of the funds subject to reimbursement for costs expended for the filing of the petition, the petition may be granted by the court without notice. If, however, attorney's fees are sought, the matter must be set on the court's calendar for approval.

The order shall provide for the persons holding the funds to make a check payable to the persons entitled to costs and fees and shall provide for the issuance of a check in the amount to be deposited to be payable to the proposed custodian.

RULE 607.09 PETITIONS TO AUTHORIZE MEDICAL TREATMENT FOR ADULT WITHOUT CONSERVATOR

If authorization of medical treatment for an adult without a conservator is required, the petition should be presented to the Probate Court. If the adult for whom medical treatment is sought (patient) is not represented by an attorney, the court will appoint private counsel or the Public Defender to represent the patient, set the petition for hearing within a day or two and prescribe notice. The court, in setting the petition for hearing and determining what notice is to be given, will consider the urgency, existing medical facts and the circumstances, as set forth in the petition or in a medical affidavit submitted with the petition. If the attorney for the petitioner and the attorney for the patient so stipulate, the court may, upon proper and sufficient medical affidavits or declarations, determine the matter without hearing or notice, make an order authorizing the recommended course of medical treatment and designate the person to give consent.

**RULE 607.10 SPOUSAL PROPERTY PETITIONS
(PROBATE CODE SECTIONS 13650-13660)**

A petition containing an allegation that the character of any property was transmuted after December 31, 1984, by decedent and surviving spouse must be based on a writing (Family Code Section 852). A photocopy of the writing showing signatures must be attached to the petition.

If a petition contains an allegation that the character of any property was transmuted before January 1, 1985, by decedent and surviving spouse, such claim may be proved either by a writing or by other supporting facts which must be set forth in the petition.

A petition must list, on separate schedules, the decedent's interest and the surviving spouse's interest in the property. For example, if it is alleged the decedent and surviving spouse owned as community property a piece of real property, the decedent's undivided one-half (1/2) interest in such property should be listed on one schedule and the surviving spouse's undivided one-half (1/2) interest in the same property listed on another schedule.

The following requirements do not apply to a petition if the entire estate of the decedent passes to the surviving spouse either under a will or pursuant to intestate succession and one of the following applies: (a) the petition only seeks determination of the passing of the property without a finding of the character (community or separate) of the property; or (b) the decedent and surviving spouse executed a written agreement transmuting or confirming all property owned at the date of the agreement and all after-acquired property into community property; or (c) the decedent and surviving spouse executed a written agreement which transmuted or confirmed the subject property to community property and the date of acquisition of the subject property is alleged. If (b) and/or (c) apply, copies of all agreements must be attached to the petition. In all other cases, the petition must be supplemented to include the following allegations:

- A. Date and place of marriage; and domicile at the time of marriage;
- B. Dates decedent and a surviving spouse came to California, if not domiciled in California at time of marriage or resided in another state after marriage;
- C. If decedent owned any real or personal property on the date of marriage, a description of such property and the approximate value;
- D. Decedent's occupation and net worth at the time of marriage;
- E. Whether or not the decedent received any property after the date of marriage by gift, bequest, devise, descent, proceeds of life insurance or joint tenancy survivorship and, if so, a description of such property, giving approximate values and dates of receipt;
- F. If any property was received by decedent under E above and is part of the estate, identify the property;
- G. The exact title vesting as of the decedent's date of death for each item of property and a statement whether it was acquired after December 31, 1984;
- H. If claims are based on any document, attach a photocopy of the document showing signatures; and
- I. In addition to the above, set forth any additional facts upon which claim of character of property is based.

(Revised effective January 1, 1994)

RULE 607.11 PETITIONS FOR CHANGE OF NAME

The petitioner and the petitioner's attorney, if any, are required to attend the hearing and appear one half (1/2) hour before hearing.

An adult petitioning for a change of his or her name should be prepared to submit to the court at the hearing a certified copy of his or her birth certificate (if born in the United States), or documents issued by the Immigration and Naturalization Service, such as a Certificate of Citizenship or Resident Alien Card (if born outside the United States), so that the court can determine the correct spelling of the name.

If the petition contains a request for change of name of a minor,

- A. The minor may be required to attend the hearing if he or she is 14 years of age or older; and
- B. The parent should be prepared to submit to the court a certified copy of the child's birth certificate, if born in the United States, or a properly authenticated copy of a foreign birth certificate together with an English translation (including a declaration as to the qualifications of the translator), if the child was born outside the United States.
- C. The non-petitioning parent's last known address must be included in item 7 of the petition. If the non-petitioning parent is alleged to be deceased, a certified copy of the death certificate shall be attached to the petition or submitted at the hearing. If the location of a non-petitioning parent is unknown, he/she may be served by publication of the Notice of Hearing to Non-Petitioning Parent in accordance with Code of Civil Procedure Section 415.50. An application for order for publication may be submitted ex parte. An affidavit/declaration of diligent search, Notice of Hearing to Non-Petitioning Parent, and Order for Publication must accompany the application. (See Code of Civil Procedure 415.50.)